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TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF BELARUS CONCERNING THE ENCOURAGEMENT AND RECIPROCAL PROTECTION OF INVESTMENT, WITH ANNEX, PROTOCOL AND RELATED EXCHANGE OF LETTERS

JUNE 20, 1996.—Ordered to be printed

Mr. HELMS, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany Treaty Doc. 103–36]

The Committee on Foreign Relations to which was referred the Treaty Between the United States of America and the Republic of Belarus Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, Protocol, and Related Exchange of Letters, signed at Minsk on January 15, 1994, having considered the same, reports favorably thereon with one declaration, and recommends that the Senate give its advice and consent to ratification thereof subject to the one declaration as set forth in this report and the accompanying resolution of ratification.

I. PURPOSE

The principal purposes for entering into a bilateral investment treaty (BIT) are to: protect U.S. investment abroad where U.S. investors do not have other agreements on which to rely for protection, encourage adoption of market-oriented domestic policies that treat private investment fairly, and support the development of legal standards consistent with the objectives of U.S. investors. The BIT, therefore, is intended to ensure that United States direct investment abroad and foreign investment in the United States receive fair, equitable and nondiscriminatory treatment.

II. BACKGROUND

The proposed treaty together with the proposed annex, protocol, and related exchange of letters was signed on January 15, 1994. No bilateral investment treaty is currently in force between the United States and Belarus.

The proposed treaty and protocol were transmitted to the Senate for advice and consent to ratification on September 6, 1994 (see Treaty Doc. 103–36). The Committee on Foreign Relations held a public hearing on the proposed treaty together with the proposed annex and protocol on November 30, 1995.

III. SUMMARY

A. GENERAL

Bilateral investment treaties (BITs) are the result of a treaty program begun in 1982 as a successor to the Friendship, Commerce, and Navigation Treaties that formerly set the framework for U.S. trade and investment with foreign countries. The BIT is based on a U.S. model treaty.

All parties must agree to the basic guarantees of the model before the United States will enter into negotiations on a treaty. The six basic guarantees contained in the model are:

investors receive the better of national or most favored nation status;

expropriation of private property is limited and a remedy exists;

investors have the right to transfer funds into and out of the country without delay using a market rate of exchange;

inefficient and trade distorting practices such as performance requirements are prohibited;

investment disputes may be submitted to international arbitration; and

top managerial personnel of an investor's choice may be engaged regardless of nationality.

Since 1982, the United States has signed 37 BITs, and the Senate has given its advice and consent to the ratification of 24 BITs. Twenty-two BITs are currently in force. The Senate has ratified two treaties that have not entered into force with Russia, where the Duma has failed to ratify, and with Ecuador, which was ratified by both countries, but the U.S. is delaying the exchange of instruments until Ecuador has fully implemented its obligations under the U.S.-Ecuador intellectual property rights agreement. There are currently 12 on-going negotiations for BITs with other countries.

B. COMPARISON TO THE MODEL

The Treaty Between the United States of America and the Republic of Belarus Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, Protocol, and Related Exchange of Letters (Treaty Doc. 103–36) (BIT), is based on the United States 1992 Model Bilateral Investment Treaty (Model). The following is an analysis of the major provisions of the treaty and a comparison with the 1992 model, which served as the foundation for the negotiation of the treaty.

Preamble.—The Preamble of the BIT establishes the goals of the treaty to include: greater economic cooperation, stimulation of the flow of private capital and economic development, maximization of effective utilization of economic resources and the improvement of living standards, promoting respect for internationally recognized

worker rights, and maintenance of health, safety and environmental measures of general application. The goals outlined are not legally binding but may be used to assist in interpreting the Treaty and in defining the scope of Party-to-Party consultation procedures pursuant to Article VIII.

Article I (definitions and general provisions.)—The BIT follows the Model with respect to definitions except that the BIT adds definitions for "state enterprise" and "delegation." A "state enterprise" is defined as "an enterprise owned, or controlled through ownership interests, by a Party" (Art. I:1(f)). A "delegation" is defined to include "a legislative grant, and a government order, directive, or other act transferring to a state enterprise or monopoly, or authorizing the exercise by a state enterprise or monopoly of, governmental authority (Art. I:1(g)). The Administration informs staff these provisions were added in order to clarify and extend the requirements of the treaty with respect to state enterprises because of the dominant role of state enterprises in the Belarusian economy. The negotiating agencies have informed staff that they believe this addition gives U.S. investors added protection. Similar language is contained in the NAFTA.

Also, the BIT adds "partnership interests" to the illustrative list of forms of equity participation explicitly mentioned in the model (Art. I:1(d)(ii)).

The BIT follows the Model as to the right to deny treaty benefits to companies controlled by nationals or firms of third countries and the rule that any alteration of the form in which assets are invested or reinvested will not affect their character as investments (Arts. I:2, I:3).

Article II (treatment).—The BIT contains a provision identical to that in the Model setting forth each Party's obligation to provide the better of national or MFN treatment to investment and associated activity of the other Party and its right to exempt certain sectors from this obligation (Art. II:1). (Most-favored-nation or "MFN treatment" for purposes of this treaty means treatment no less favorable than that which a Party accords, in like situations, to investments in its territory of nationals or companies of a third country. "National and MFN treatment" for purposes of the treaty means whichever of national treatment or MFN treatment is the most favorable.)

The BIT also contains provisions identical to the Model as to the minimum treatment to be accorded investments; prohibiting arbitrary or discriminatory impairment of investments; and requiring each Party to observe any obligation it may have entered into with respect to an investment (Art. II:3).

The BIT also follows the Model as to entry of nationals for investment purposes (Art. II:4); engaging top managerial personnel of choice (Art. II:5); prohibiting performance requirements (Art. II:6); providing effective means of asserting claims and enforcing rights (Art. II:7); making public all laws, regulations, administrative processes, and adjudicatory decisions pertaining to or affecting investments (Art. II:8); clarifying the application of the BIT on a national treatment basis in states, territories, and possessions of the United States (Art. II:9); removing from the scope of MFN treatment a Party's binding obligations under free trade areas or customs union

and under any multilateral international agreement entered into under the auspices of the GATT subsequent to the signature of the BIT (Art. II:10).

The BIT adds a paragraph regarding state enterprises, stating that the BIT may not be construed to prohibit a Party from establishing or maintaining a state enterprise, that any such enterprise may not act inconsistently with Treaty obligations when exercising governmental authority delegated to it; and that the enterprise must accord the better of national or MFN treatment in its sale of goods or services in the Party's territory (Art. II:2). Administration officials have informed staff that the paragraph was added with the intent of clarifying and extending the requirements of the treaty with respect to state enterprises.

The BIT adds another paragraph further defining what are to be considered "associated activities" for purposes of the BIT. It lists ten additional activities, including franchises and other licenses; access to registrations, licenses, permits, and other approvals; access to financial institutions, credit markets, and other funds; the import and export of equipment and automobiles; dissemination of commercial information; conducting market studies; the appointment of commercial representatives and the participation of such individuals in trade fairs and promotional events; marketing goods and services; and access to public utilities, public services, commercial rental space, raw materials, inputs, and services of all types at nondiscriminatory prices, if the prices are set or controlled by the government (Art. II:11). Administration officials have informed staff that the paragraph was added to the prototype text in order to provide additional concrete examples of the types of associated activities for which investors should receive the better of national or MFN treatment. According to the Administration this language was designed to avoid problems that U.S. businesses may face in emerging market economies, and its addition is seen as a plus for U.S. investors. The same provision can also be found in BITs with NIS and Eastern European countries including the Czech Republic, Slovakia, Kazakstan, Kyrgyzstan, Moldova, and Poland, all of which are currently in force.

Article III (expropriation).—The BIT is identical to the Model's expropriation article (except for one provision as to transferability). The Article prohibits expropriations of covered investments except if carried out for a public purpose, in a non-discriminatory manner, upon payment of prompt, adequate and effective compensation, and in accordance with due process of law and the minimum treatment standards set forth in Article II (generally requiring "fair and equitable treatment") (Art. III:1); it sets forth specific requirements as to compensation (Art. III:2); and it establishes compensation based on the currency in which the fair market value of the expropriated investment is denominated and operates to protect the investor from exchange rate risk (Arts. III :3, III:4).

While the BIT contains Model's obligation that compensation be freely transferable, it does not include the additional language contained in the Model that compensation be transferable "at the prevailing market rate of exchange on the date of expropriation" (Art. III:1). Addition rights and obligations as to the currency to be used in compensations and set forth in the Protocol, discussed below.

Article IV (transfers)—The BIT is identical to the Model regarding transfers into and out of the territory of a Party. This obligation—which defines transfers to include, among other things, compensation paid under Article III—requires in part that transfers be made in a freely usable currency at the current market rate of exchange on the date of transfer with respect to spot transactions in the currency to be transferred. In his transmittal documents, the Secretary of State defines "freely usable" as the standard of the International Monetary Fund. At present there are five such "freely usable" currencies: the U.S. dollar, Japanese yen, German mark, French franc, and British pound sterling.

Paragraph three of this article recognizes that notwithstanding the guarantees, Parties may maintain certain laws or obligations that could affect transfers with respect to investments. It provides that the Parties may require reports of currency transfers and impose income taxes by such means as a withholding tax on dividends. It also recognizes that Parties may protect the rights of creditors and ensure the satisfaction of judgments in adjudicatory proceedings through their laws, even if such measures interfere with transfers. Such laws must be applied in an equitable, nondiscriminatory and good faith manner.

Article V (consultations).—The BIT is identical to the Model regarding the obligation of Parties to consult with one another with respect to disputes and other matters arising under the Treaty.

Article VI (investor/state disputes).—The BIT is identical to the Model regarding provisions for consultation and arbitration in investor-State disputes. As in the Model, each Party consents to the submission of any investment dispute to binding international arbitration in the event that the dispute cannot be resolved amicably. Belarus is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. It has entered into the Convention reciprocally — that is, with the declaration that it will apply the Convention to the recognition and enforcement of awards made only in the territory of another contracting state. Belarus is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Unlike the Model, the BIT does not exempt from its investor/state dispute procedures those disputes arising under the export credit, guarantee, or insurance programs of the Export-Import Bank of the United States or under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other means of settling disputes (*see* Model, Art. VIII). According to the State Department, EXIM, OPIC, and other relevant government agencies indicated prior to the negotiation of this Treaty that they saw no need to maintain such a provision.

Article VII (interstate disputes).—The BIT is identical to the Model in providing for binding arbitration for interstate disputes in the event such a dispute has not been resolved through consultations or other diplomatic means.

Unlike the Model, the BIT does not exempt from its interstate dispute procedures those disputes arising under the export credit, guarantee, or insurance programs of the Export-Import Bank of the United States or under other official credit, guarantee or insurance arrangements pursuant to which the Parties have agreed to other

means of settling disputes. According to the State Department, EXIM, OPIC, and other relevant government agencies indicated prior to the negotiation of this Treaty that they saw no need to maintain such a provision.

Article VIII (preservation of rights).—The BIT is identical to the Model in allowing each Party to provide investments of the other Party treatment that is more favorable then that minimally required under the BIT, as a result of national laws, regulations, administrative procedures, or adjudications, international legal obligations, or other obligations assumed by either Party.

Article IX (exceptions).—The BIT is identical to the Model as to exceptions for measures necessary for public order, the fulfillment of certain international obligations, and protecting essential security interests. Like the Model, the BIT also allows Parties to prescribe special formalities for investments so long as the substance of treaty rights is not impaired. State Department officials have informed Committee staff that during negotiation of the BIT Parties agreed that this provision is self-judging.

Article X (taxation).—The BIT is identical to the Model with respect to each Party's tax policies as applicable to investments of the other Party and the application of the treaty to tax matters in limited areas. The Treaty, and the dispute settlement provisions, apply to tax matters in three areas, to the extent they are not subject to the dispute settlement provisions of a tax treaty, or, if so subject have been raised under a tax treaty's dispute settlement procedures and are not resolved in a reasonable period of time. The Treaty could apply to tax matters in three areas: expropriation (Article III), transfers (Article IV), and the observance and enforcement of terms of an investment agreement or authorization (Article VI).

Article XI (extent of application).—Like the Model, the BIT clarifies that it fully applies to all political subdivisions. The BIT, however, specifies that it applies to administrative as well as political subdivisions.

Article XII (final provisions).—The BIT is identical to the Model as to its entry into force, its application to current and future investments, termination, and continued temporary application to investments made or acquired prior to any termination date. The BIT adds that the Side Letter, as well as the Annex and Protocol form an integral part of the Treaty.

Annex (sectoral exemptions).—The BIT is identical to the Model as to the sectors and matters in which the United States may make or maintain limited exceptions from its national treatment and MFN obligations (Annex, paragraphs 1, 2). The Annex contains an additional paragraph listing the sectors in which Belarus may make or maintain limited exceptions from its national treatment obligation (no MFN exceptions are listed). Among these are the ownership of land and real property; the acquisition of state and municipal property in the course of denationalization; and detective and security services. Also included are: ownership of insurance companies, electric power stations connected to the United Energy System; exploration and exploitation of natural resources; dealership in Belarus Government securities; provision of common carrier telephone and telegraph network services; customhouse brokers;

and ownership and operation of broadcast or common carrier radio and television stations.

Protocol (expropriation and privatization).—Unlike the Model, the BIT contains a protocol addressing expropriation and privatization issues. The Protocol provides that in the event an investor is to be compensated for an expropriation, payment may be made in a freely unsable currency or in the official currency of Belarus, depending on the currency in which the original investment was made, subject to the obligations in Article IV regarding the transfers (paragraph 1).

The Parties also "confirm(s) their mutual understanding" as to the meaning of the term "acquisition of state and municipal property in the course of denationalization and privatization" and that the Republic of Belarus may treat its nationals and companies more favorably than those of the United States in acquiring such property (paragraph 2). Any such treatment must be made public promptly, be applied by governmental authorities on an MFN basis, and be carried out without prejudice to the provisions of the Treaty (paragraph 2).

Exchange of letters (investor assistance).—Following the protocol is an exchange of letters between the United States Ambassador to the Republic of Belarus and the Deputy Chairman of the State Committee of the Republic of Belarus for Foreign Economic Relations in which the parties confirm that the Republic of Belarus has agreed to designate an office to assist United States investors in deriving the full benefits of the BIT in connection with their investment-related activities. The letters set forth the types of assistance that will be provided and designate the State Committee of the Republic of Belarus for Foreign Economic Relations to perform this function.

IV. Entry Into Force and Termination

A. ENTRY INTO FORCE

The proposed treaty will enter into force 30 days after the date of the exchange of instruments of ratification. From the date of its entry into force, the BIT applies to existing and future investments.

B. TERMINATION

The proposed treaty will continue in force for ten years after ratification without termination. A Party may terminate the proposed treaty ten years after entry into force if the Party gives one year's written notice of termination to the other Party. If terminated, all existing investments would continue to be protected under the BIT for ten years thereafter.

V. Committee Action

The Committee on Foreign Relations held a public hearing on the proposed treaty, annex, protocol, and related exchange of letters with Belarus on November 30, 1995. The hearing was chaired by Senator Thompson. The Committee considered the proposed treaty, annex and protocol with Belarus on March 27, 1996, and ordered

the proposed treaty, annex and protocol favorably reported by voice vote, with the recommendation that the Senate give its advice and consent to the ratification of the proposed treaty, annex and protocol subject to one declaration.

VI. COMMITTEE COMMENTS

A. DECLARATION

The Committee approved a resolution of ratification for the BIT with Belarus that includes a declaration supporting the important role of the Belarusian Supreme Soviet in the development of democratic government in Belarus. The declaration should be interpreted as an expression of concern by the Committee with the efforts of the President of Belarus to weaken the cause of Belarusian sovereignty. The declaration insists that steps taken in such a direction shall not reduce the binding commitment of this treaty on Belarus.

Despite the active efforts of the Belarusian President to prevent the election of a working parliament, on December 10, 1995, the Belarusian people voted in sufficient number to elect a new Parliament. The development of the Belarusian Supreme Soviet as an independent institution of government has already proven to be an important counter-balance to those who would have Belarus forfeit its sovereign status. The act of ratifying this BIT is in and of itself a proper function of the Belarusian parliament. In approving the resolution of ratification for the BIT, the Committee on Foreign Relations of the United States Senate expresses its approval not only of the substance of the BIT, but of the process of parliamentary democracy in Belarus.

B. CURRENT INVESTMENT STATISTICS

[in millions of dollars]

	Direct investment	Stock	Exports	Imports
1992	no data	no data	0	30
1993	no data	no data	92	39
1994	no data	no data	46	61
1995	no data	no data	48	50

United States direct investment flows and stock in Belarus

The Commerce Department's "Survey of Current Business" does not include data on investment flows or year-end stocks of direct investment in Belarus.

United States Trade with Belarus

The trade data in the chart above for 1994 and 1995 comes from the U.S. Bureau of Census' December 1995 press release. Those through 1993 are taken from the International Monetary Fund's "Directions of Trade." The IMF received its trade data for this report from the Bureau of Census. The import data include the cost of the imported goods, shipping insurance and freight. Overall imports totaled $534 million and overall exports totaled $968 million in 1993.

According to the 1996 National Trade Estimate Report on Foreign Trade Barriers, produced by the Office of the United States Trade Representative, in January 1996 the Government of Belarus announced a series of export stimulation measures. Under the new government plan, exporters will reportedly pay ten percent less tax when they operate a barter regime between enterprises. A Presidential decree sets different exchange rates for local exporters purchasing raw materials abroad and for importers of "non-essential" goods. In accordance with the law on foreign investment, firms with at least 30 percent foreign participation are exempted from the requirement. The revenue from the higher exchange rate will go into a special fund to support exporters.

In support of this agreement, the Committee recognizes that ratification of the BIT is an important step toward establishing transparent and predictable procedures for U.S. investors in Belarus. Furthermore, the Treaty provides a legal basis from which U.S. investors, and the United States Government, can challenge capricious or harmful actions by the Government of Belarus. In general, U.S. investment in Belarus can reinforce broader U.S. policy goals toward Belarus by demonstrating the benefits of economic reform and offering an opportunity for increased, private U.S.-Belarus contacts.

At the same time, the Committee is reluctant to provide any guarantees to U.S. investors that the protections listed in the BIT will ultimately be viewed as binding by the Government of Belarus. The political turmoil, slow pace of economic reform, and general disregard for rule-of-law in Belarus continue to serve as daunting obstacles to successful and profitable investment in Belarus. The U.S. business community should fully recognize that in approving this Treaty the Senate Foreign Relations Committee in no way pronouncing there to be a favorable investment climate in Belarus today.

C. ENFORCEMENT

Following the hearing on the bilateral investment treaties, Senator Helms requested information regarding the utility of the bilateral investment treaty with Argentina. Specifically, Senator Helms requested that the State Department identify outstanding investment disputes with U.S. corporations doing business in Argentina and actions taken by the U.S. to address the BIT violations. Since its entry into force on October 24, 1994, two disputes have developed in Argentina. The following is excerpted from the State Department's response to Senator Helms: [1]

> We are aware of two investment disputes that have developed in Agrentina recently.
>
> *1. CDSI*
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> CDSI is a Maryland computer firm involved in a contract dispute with the Cordoba provincial government in Argentina. CDSI believes that Cordoba officials improperly

[1] Letter from Assistant Secretary for Legislative Affairs, Wendy R. Sherman, to Senator Helms, Committee on Foreign Relations, December 18, 1995.

reversed a contract award to a firm with which it had a subcontract, depriving it of the value of its investment.

Department officials have discussed the case with CDSI representatives in Washington. Embassy officials are in regular contact with CDSI representatives in Buenos Aires.

CDSI has informed us that, if the dispute is not resolved through ongoing negotiations, it may avail itself of the right to binding arbitration under the BIT. We will continue to work with company and officials in Argentina to resolve this case.

[State Department officials have informed Committee staff that CDSI recently reached an agreement with the provincial government of Cordoba. According to State Department officials the parties are satisfied with the agreement.]

2. Mi-Jack

Mi-Jack, based in Illinois and Texas, owns about 30% of a company that purchased the right to operate one of five terminals at the Port of Buenos Aires. (The rest of the equity is not owned by Americans.) Mi-Jack is operating the dock in accordance with regulations, fees, and labor rules specified by the Government of Argentina in the tender.

At some point after this tender process began, the Argentine federal government transferred adjacent dock property to the Buenos Aires provincial government. The provincial government leased the property to a company which began operating a sixth terminal, without the conditions imposed on other dock operators by the federal government. Mi-Jack maintains that this unequal treatment is a BIT violation, and has requested USG assistance.

Department and other agency officials have discussed the case with Mi-Jack. Our Ambassador recently urged the Argentine Minister of Economy and the Governor of the Province of Buenos Aires to address the issues Mi-Jack has raised and resolve the dispute.

The Committee believes that the value of the proposed treaty depends upon the extent to which it is enforced. The Committee refers to the two cases in Argentina, cited above, as examples of how the proposed treaty can be a useful tool both to business and U.S. embassies in protecting the interests of U.S. business directly investing in-country. The Committee believes that the treaty should serve as more than a diplomatic tool. The Committee notes that local remedies and domestic enforcement of arbitral awards are essential steps in enforcing the guarantees provided in the proposed treaty and believes that the President should communicate, at the time of the exchange of the instruments of ratification, the importance of a domestic enforcement regime to the ultimate success of the proposed treaty. Such an indication would add credence to the U.S. position that BITs provide genuine protections to investors, and are not merely rhetorical endorsements of market economies.

C. PROTECTING U.S. BUSINESSES INVESTING ABOARD

Although a BIT provides certain legal protections designed to give investors recourse in the case of unfair treatment, the role of the U.S. State Department and other government agencies such as USTR remains essential to the protection of U.S. citizens doing business abroad.

Issues regarding the role of the State Department and U.S. posts abroad in assisting U.S. investors were raised during the Committee's consideration of the BIT. After the November 30, 1995 hearing, Senator Helms requested a description of the general procedure at U.S. Embassies, and in Washington, for assisting U.S. investors when potential BIT violations, or investment disputes, including expropriated property claims, in countries not a Party to a BIT, are brought to the attention of the Embassy by the investors. State Department's response to this inquiry, in a letter dated December 18, 1995,[2] is reproduced below:

> An important responsibility of all U.S. diplomatic posts abroad is to assist U.S. investors and property owners in the resolution of disputes with the host government. Where disputes arise, U.S. posts and the Department provide a range of services to the U.S. claimant.
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> These services include:
>
> (1) advising the U.S. claimant of local legal counsel which may be available to handle similar disputes;
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> (2) assisting the U.S claimant in contacting host government officials which may be in a position to facilitate a resolution of his claim;
>
> (3) directly encouraging host government officials to negotiate a resolution of the claim; (such contacts may be on behalf of a single claimant or multiple claimants where there are a number of outstanding claims);
>
> (4) occasionally, where the circumstances warrant, the U.S. may decide to directly espouse a claim or claims; and
>
> (5) in addition, where a BIT is in force, other options (e.g. binding investor-state arbitration) may be brought to the attention of the investor and/or local officials.
>
> Given the wide variety of circumstances associated with investment disputes around the globe, the range of resources available at individual diplomatic posts, the variety of assistance being requested by individual investors, and the diversity of host country investment regimes, a good deal of discretion is necessary to tailor individual response to the particular circumstances of the case.
>
> For example, the approach taken in the case of a country which has a well functioning judicial system and demonstrated effectiveness in adjudicating disputes may be quite different from that taken with respect to cases where some or all of these conditions do not prevail. The investor's preferences also guide our response. The current ap-

[2] Letter from Assistant Secretary for Legislative Affairs, Wendy R. Sherman, to Senator Helms, Committee on Foreign Relations, December 18, 1995.

proach to providing assistance to U.S. claimants in investment disputes permits us the flexibility needed to tailor a response that reflects both the conditions prevalent in the host country and the investor's own strategy.

Action on investment disputes is coordinated through constant routine communication among Embassy and Washington offices. This is supplemented by periodic formal requests from the Department for information on investment disputes and by the Post's preparation of the Investment Climate Statements for each country. In addition, the Department chairs the Interagency Staff Coordinating Group on Expropriations ("Expropriation Group"), which is comprised of representatives from the Office of the United States Trade Representative, the Overseas Private Investment Corporation, the Department of Commerce, and the Department of the Treasury. This group meets periodically to discuss expropriation and related issues.

In addition to assisting individual U.S. investors when they have an investment dispute, we engage in activities that could help prevent investment disputes. Officials in Washington and in our Embassies also examine investment practices in other nations and work to discourage other governments from passing legislation that might disadvantage U.S. investors and lead to investment disputes. The results of these examinations are included in the annual Investment Climate Statement, a report which is widely used by both U.S. officials and investors. We also engage in negotiations with other governments on BITS and multilateral disciplines that help protect the interests of U.S. investors.

In the past year or two, we have reached a point where a significant number of BITs have entered into force and, thus, apply to U.S. investment. At this time, we are reviewing ways to even better inform our posts about the obligations contained in these BITs, in order to assist U.S. investors and monitor compliance with these obligations by our BIT treaty partners.

The Committee supports the efforts of the State Department and U.S. foreign posts to educate businesses and ensure that the investment climate in these countries remains open and fair for U.S. businesses. The Committee supports the BIT as a tool for both businesses and U.S. diplomats to ensure fair investment environments where U.S. companies are doing business.

In addition, Senator Helms requested an assessment of the utility of developing procedures at the State Department to ensure consistently timely response when investors bring foreign investment problems to the attention of U.S. Posts and the Department. State Department's response to this inquiry, was also included in the dated December 18, 1995 letter, as reproduced below:

It is current State Department policy and practice to respond in a timely manner when investors bring investment problems to the attention of embassies. Any lapse in such

practice can and should be brought to the attention of the Office of Investment Affairs in Washington, which will ensure that a response is forthcoming.

While a timely response should be a constant, we believe that the nature of that response should vary from case to case. Investors benefit from the freedom our diplomats enjoy to pursue solutions tailored to the investor's problems. In some countries, a quiet call from an Embassy officer to a government official can help an investor. Elsewhere, if the government has not been responsive, we may directly approach senior government officials.

The following examples illustrate the variety and complexity of individual circumstances.

A company informed us of an investment dispute, but specifically requested that we not take any action as negotiations continued.

In a country undergoing civil strife, investors are pursuing arbitration through an international financial institution.

In one country, we have had to develop specialized procedures and increase Embassy staffing to deal with a very large number of claims.

Supplanting our existing flexible process for assisting U.S. claimants with a "one size fits all" policy would not likely work to the benefit of investors. Investors gain when we are free to fashion a response that takes into consideration the facts unique to that dispute, the investor's strategy for obtaining resolution to the dispute, the resources available to the USG to promote a quick resolution to the dispute, and the broader economic and political context within which we and the investor must work to achieve the desired outcome.

As described in the previous question, American diplomats and Department employees use a wide variety of strategies to assist U.S. citizens in investment disputes abroad. Required procedures could have significant resource implications without increasing the effectiveness of these strategies. Furthermore, we do not believe that a procedure developed in Washington which may not reflect either the unique conditions existing in a particular country or the experiences of our diplomats or businessmen is in the interests of either U.S. investors or the United States.

The Committee agrees that a "one size fits all" approach to addressing how best to protect U.S. investors faced with disputes with foreign governments would not be useful. However, the Committee supports the development by State and USTR of flexible procedures that ensure that all U.S. investors, large and small, will be given timely assistance when they raise investment issues with the U.S. State Department, both at the missions and in Washington. The Committee expects that such procedures would ensure appropriate coordination between U.S. missions and the State Department and the Office of the U.S. Trade Representative in Washington.

VII. Explanation of Proposed Treaty and Protocol

For a detailed article-by-article explanation of the proposed bilateral investment treaty, annex, protocol, and related exchange of notes, see the analysis contained in the transmittal documents included in Treaty Doc. 103–36.

VIII. Text of the Resolution of Ratification

Resolved, (two-thirds of the Senators present concurring therein), That the Senate advise and consent to the ratification of The Treaty Between the United States of America and the Republic of Belarus Concerning the Encouragement and Reciprocal Protection of Investment, with Annex, Protocol, and Related Exchange of Letters, signed at Minsk on January 15, 1994 (Treaty Doc. 103–36). The Senate's advice and consent is subject to the following declaration, which the President, using existing authority, shall communicate to the Republic of Belarus, in connection with the exchange of the instruments of ratification of the Treaty:

It is the Sense of the Senate that the United States:

(a) supports the Belarusian Parliament and its essential role in the ratification process of this Treaty;

(b) recognizes the progress made by the Belarusian Parliament toward democracy during the past year;

(c) fully expects that the Republic of Belarus will remain an independent state committed to democratic and economic reform; and

(d) believes that, in the event that the Republic of Belarus should unite with any other state, the rights and obligations established under this agreement will remain binding on that part of the Successor State that formed the Republic of Belarus prior to the union.

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